



**STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
INVITATION FOR BID**

**IFB NO. B3E05077**  
**TITLE: Microfilming Services**  
**ISSUE DATE: 11/19/04**

**REQ: NR 231 5F000000008**  
**BUYER: Laura Ortmeyer**  
**PHONE NO.: (573) 751-4887**  
**E-MAIL: Laura.Ortmeyer@oa.mo.gov**

**RETURN BID NO LATER THAN: 12/13/04 AT 2:00 PM**

**MAILING INSTRUCTIONS:** Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

**RETURN BID TO: DPMM or DPMM**  
**P O BOX 809 301 WEST HIGH ST, RM 630**  
**JEFFERSON CITY MO 65102-0809 JEFFERSON CITY MO 65101**

**CONTRACT PERIOD: Date of Award through December 31, 2007**

**DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:**

Secretary of State  
600 W. Main Street  
Jefferson City, Missouri

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 08/28/04). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

**SIGNATURE REQUIRED**

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.	
PHONENO.	FAX NO.		E-MAIL ADDRESS

**NOTICE OF AWARD (STATE USE ONLY)**

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

## **1. INTRODUCTION AND GENERAL INFORMATION**

### **1.1 Introduction:**

- 1.1.1 This document constitutes an invitation for competitive, sealed bids for the provision of microfilming services as set forth herein.
- 1.1.2 Organization - This document, referred to as an Invitation for Bid (IFB), is divided into the following parts:
  - 1) Introduction and General Information
  - 2) Contractual Requirements
  - 3) Bid Submission Information
  - 4) Pricing Page(s)
  - 5) Exhibits A - D
  - 6) Terms and Conditions

### **1.2 Background Information:**

- 1.2.1 Currently, no contract exists through Division of Purchasing and Materials Management for the microfilming services specified herein.
- 1.2.2 The Office of the Secretary of State is responsible for managing both current and historical records of the state to ensure those records are accessible to Missouri citizens. The Office of the Secretary Of State is funding the microfilming of selected circuit and probate court documents.
- 1.2.3 To obtain additional information about the Office of the Secretary of State, potential bidders may refer to the following website address: <http://www.sos.mo.gov/records>
- 1.2.4 Although an attempt has been made to provide accurate and up-to-date information, the State of Missouri does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this Invitation for Bid.

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide microfilming services for the Missouri Secretary of State Office (hereinafter referred to as the “state agency”) located at 600 W. Main St. Jefferson City, MO, in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall perform all services to the sole satisfaction of the state agency.
- 2.1.3 The contractor shall provide microfilming services for selected court records of the Jackson County Circuit Court that were created between 1956 and 1966. The state agency estimates that microfilming could take thirty (30) months to complete if only one camera operator is assigned.
  - a. The court record series for the Jackson County Circuit Court are contained in boxes and have an approximate volume of 1,826 cubic feet with approximately 1,750 documents per box. The documents range in size from 3 x 2 inches to 8 1/2 x 14 inches.
- 2.1.4 The contractor shall make every attempt to complete all microfilming services by September 30, 2007, however, the contractor must complete all microfilming services required herein, including reporting requirements within 36 months of the effective date of the contract.
  - a. If the contractor anticipates any obstacle to completing the microfilming services by the specified due date, the contractor shall notify the state agency of such problem/delay at the earliest possible opportunity.
- 2.1.5 The State of Missouri shall make no guarantee of a minimum or maximum amount of services that may be required.
- 2.1.6 The State of Missouri reserves the right to obtain alternate microfilming services if deemed necessary to satisfy special or emergency needs of the state agency.
- 2.1.7 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

### **2.2 Specific Requirements:**

- 2.2.1 After the award of contract, the state agency shall provide training to the contractor regarding the proper filming order of the document within the folder.
  - a. The contractor shall microfilm the court records in chronological order pursuant to the training provided by the state agency.
  - b. The contractor shall properly index/label each microfilm roll pursuant to the training provided by the state agency.
- 2.2.2 The state agency shall deliver the court records to the contractor’s premises at a time mutually agreed to by the state agency and the contractor. In addition, the state agency shall pick-up the court records after the contractor has completed the microfilming services as specified herein.
- 2.2.3 The contractor must maintain an established place of microfilming business, and properly identified as said business. In addition, the contractor’s place of business must be located within the State of Missouri.
  - a. The contractor shall be available for delivery and/or pickup of court records Monday through Friday, except for the state observed holidays.

- b. In the event of an unresolved dispute concerning times of delivery and/or pick up, the contractor shall understand and agree that the state agency decision shall be final and without recourse.
  - c. The state agency shall not make a delivery and/or pick-up of court records if there is less than ten (10) cubic feet of microfilm.
- 2.2.4 Prior to the state agency delivering the court records to the contractor, the state agency shall prepare all court records to be camera-ready for microfilming. In the event the contractor needs to repair a camera-ready document, the contractor may use standard scotch tape to make the repair.
- 2.2.5 Prior to the contractor providing microfilming services, the contractor must provide the state agency with a test roll of microfilm (standard step test) from each camera proposed to provide services. In addition, the contractor shall submit a test roll of microfilm to the state agency for the determination of proper setting(s) to be used for microfilming the court records.
- 2.2.6 The contractor shall provide microfilming services in accordance with, but not necessarily limited to, the following requirements:
- a. The contractor shall provide one (1) camera silver copy without any duplicates.
  - b. The contractor shall microfilm the twentieth century typescript on 16MM-roll microfilm. The contractor shall microfilm the 16MM Records on 215 ft. 2.5 mil microfilm. The resulting product shall be dual level blipped.
  - c. The contractor should microfilm the court records using a rotary camera at a reduction ratio of 24X. If the contractor microfilms the court records on a planetary camera, a reduction ratio of 24X is preferred, but a 32X reduction shall be considered acceptable.
  - d. The contractor shall use the roll numbers provided by the state agency. The contractor shall maintain the roll numbers in consecutive order. If multiple cameras are used, the film numbering sequence method shall be provided by the state agency.
  - e. Density must not exceed a variance of .10 from the beginning to end of any single roll of microfilm.
  - f. Density of microfilm must be between .80 and 1.2. The optimum density shall be determined based on the outcome of the test roll of microfilm.
  - g. Resolution must meet or exceed 108 lines per mm on each roll of microfilm at a reduction of 24X or a 4.5 test pattern reading regardless of reduction.
  - h. Microfilm must be clear of streaks and scratches.
  - i. Base fog density should not exceed .10.
  - j. After completing the microfilming services, the contractor shall return the court records to the original order in which the court records were presented to the contractor for microfilming.
- 2.2.7 The contractor shall not make any more than three (3) retakes per roll. The contractor shall splice each retake to the end of the roll and shall index the same accordingly. The state agency shall reject a roll that has more than three (3) retakes and the contractor shall refilm the entire roll.
- a. Only ultrasonic splices shall be considered as acceptable.

## **2.3 Target Requirements:**

- 2.3.1 The state agency shall provide the contractor with targets and target microfilming sequence. The contractor must ensure that targets are microfilmed at the beginning and end of each roll of microfilm that is generated.
- a. Each roll of microfilm must include a density target filmed at the front and end of the roll. Density targets must not be changed within the same roll.
  - b. Each roll of microfilm must include a resolution target microfilmed at front and end of the roll. Resolution targets must not be changed within the same roll.
  - c. Targets must not be spliced onto film.
  - d. If targets are omitted from the microfilm, the contractor shall refilm the entire roll of microfilm at no additional charge to the state agency.
  - e. The contractor shall microfilm file folders and a “New File” target with each new folder.
  - f. The contractor shall provide a “Corrections” target, and such target shall accompany corrections made within a microfilming sequence as a mistake(s) occurs.
  - g. A maximum of one (1) splice per roll of microfilm shall be permitted for any retakes. In addition, retakes shall be spliced at the end of the roll. Proper targets must be microfilmed on the spliced film provided by the state agency.
- 2.3.2 The contractor shall microfilm retake targets with each roll(s) retake. The contractor shall include the following information with the retake targets.
- a. Density target
  - b. Resolution target
  - c. Start of Retake
  - d. Roll Number
  - e. Series or Record Title
  - f. File Number and/or Name
  - g. End of Retake

## **2.4 Facility Requirements:**

- 2.4.1 The contractor shall provide all microfilming services at the contractor’s facility in applicable work areas, unless otherwise approved in writing by the state agency. Applicable work areas are those used for preparation; microfilming; processing, developing, and duplication; all aspects of quality control; boxing, labeling, and packing; and all areas where original materials are stored.
- 2.4.2 The contractor shall prohibit smoking, eating, or drinking in all applicable work areas.
- 2.4.3 The contractor’s applicable work areas shall be free of contaminants (including mold/mildew) that might threaten, damage, or adversely affect source documents or microfilm.
- 2.4.4 The contractor shall store the state agency’s records at the contractor’s facility in a secure area and protected from theft or damage.
- a. The contractor shall store all records in a fire resistant room when the records are not undergoing filming, inspection, etc. The room in which the records are stored shall be locked and alarmed during non-working hours. The fire resistant storage room shall have a rating of at least three (3) hours of fire resistance.

- b. At a minimum, the contractor's facility shall be equipped with portable fire extinguishers suitable for a Class A fire in accordance with NFPA 10, *Standard for Portable Fire Extinguishers*, or standpipe systems in accordance with NFPA 14, *Standard for the Installation of Standpipe and Hose Systems*.
- c. The contractor's facility should be equipped with an automatic fire detection system that meets NFPA 72, *National Fire Alarm Code* and automatic sprinkler protection.

2.4.5 The contractor shall have a routine pest-monitoring program in place that includes routine inspections of storage furniture and incoming court record. The contractor shall not store other records that show evidence of insect or other pest infestation in the same area as the state agency's court record.

2.4.6 The contractor shall store the state agency's court records in appropriate containers and storage furniture.

2.4.7 The contractor's facility shall be subject to inspection and approval by employees or representatives of the state agency, during normal working hours, at any time during the contract period. The contractor shall not be obligated to pay any travel costs associated with visits made by state agency personnel.

## **2.5 Quality Control Requirements:**

2.5.1 The contractor shall initiate, document, and maintain a quality control program throughout the life of the contract. The contractor's quality control program shall address all specifications and reporting requirements associated with each phase of the services beginning with contractor's receipt of the court records.

2.5.2 The contractor's quality control procedures and findings shall fall within the specifications specified herein.

2.5.3 If the state agency determines that any part of microfilm does not meet the requirements specified herein, such shall be returned to the contractor for correction or refilming, at no additional cost to the state agency.

2.5.4 The contractor shall correct any errors made and identified by the contractor during the handling, filming, processing, quality-control, and duplication of materials, at no additional cost to the state agency. Furthermore, any errors made by the contractor that are identified by the state agency during inspections shall be corrected by the contractor at no additional cost to the state agency.

## **2.6 Reporting Requirements:**

2.6.1 At the request of the state agency, the contractor must submit a brief, monthly performance/progress report that describes work accomplished and problems encountered while services were being performed.

## **2.7 Additional Requirements:**

2.7.1 The contractor shall exercise due care in handling all court records or other materials microfilmed in the course of the contract. The contractor shall ensure the safety of all court records or other materials released into his/her custody for microfilming. In the event that any items are lost or damaged during microfilming, the contractor shall pay the cost of repairing those that can be repaired or, if it is possible to do so, providing replacement microfilm at the contractor's expense.

2.7.2 The contractor shall maintain all equipment used in the production of the microfilm so as not to scratch or damage the film.

- 2.7.3 The state agency shall retain sole ownership of all microfilms, and any copies thereof, produced by the contractor from the Jackson County Circuit Court materials. The contractor shall not sell or provide any part of the microfilm produced to any other entity besides the state agency. Upon completion of the contract, and if requested by the contractor and approved in writing by the state agency, the contractor may use samples of microfilm produced pursuant to the contract for the contractor's use in responding to future project requests.
- 2.7.4 If the contractor determines that the court records seem likely to suffer damage as a result of the microfilming, the contractor shall immediately consult with the state agency prior to performing any microfilming services. The contractor shall not rearrange the documents, or otherwise alter the documents in any way.
- 2.8 Liquidated Damages:** The contractor shall agree and understand that the provision of the microfilming services in accordance with the requirements and delivery date stated herein is considered critical to the efficient operations of the state agency. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the requirements and delivery date, the contractor shall agree and understand that the amount identified below as liquidated damages shall be reasonable and fair under the circumstances.
- 2.8.1 In the event that the contractor fails to provide microfilming services in accordance with the requirements and delivery date stated herein, the contractor shall be assessed liquidated damages in the amount of \$200.00 for each twenty-four (24) hour period thereafter in which the identified requirement is not completed.
- 2.8.2 The contractor shall also agree and understand that such liquidated damages shall either be deducted from the contractor's invoices pursuant to the contract or paid by the contractor as a direct payment to the state agency at the sole discretion of the state agency.
- 2.8.3 The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.
- 2.8.4 The contractor shall agree and understand that all assessments of liquidated damages shall be within the discretion of the State of Missouri and shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.
- 2.9 Invoicing and Payment Requirements:**
- 2.9.1 Immediately upon award of the contract, the contractor needs to submit or must have already submitted a properly completed State Vendor ACH/EFT Application, since the State of Missouri intends to make contract payments through Electronic Funds Transfer.
- a. If not already submitted, the contractor needs to obtain a copy of the State Vendor ACH/EFT Application and completion instructions from the Internet at:
- <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>
- b. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the contractor to properly apply the state agency's payment to the invoice submitted.
- 2.9.2 The contractor shall submit an itemized monthly invoice to the state agency at the address stated on page 1. The contractor's invoice shall include the appropriate state agency purchase order (PO) number, contract number, and contract title.
- a. The contractor shall submit each itemized monthly invoice by the 15<sup>th</sup> day of the month concluding the applicable monthly period, at the firm, fixed price stated on the Pricing Page.

- 2.9.3 The contractor shall be paid in accordance with the firm, fixed price stated on the Pricing Page.
- 2.9.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

**2.10 Other Contractual Requirements:**

- 2.10.1 Contract: A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management's acceptance of the bid by "notice of award" or by "purchase order". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- a. The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
  - b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
  - c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.
- 2.10.2 Contract Period: The original contract period shall be as stated in the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.
- 2.10.3 Termination: The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.
- 2.10.4 Contractor Liability: The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- a. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
  - b. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); or (2) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.



- 2.10.5 Insurance: The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.
- 2.10.6 Subcontractors: Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must provide notice and obtain acknowledgement from the State of Missouri prior to changing subcontractors.
- 2.10.7 Contractor Status: The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.
- 2.10.8 Coordination: The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.
- 2.10.9 Property of State: All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.

### **3. BID SUBMISSION INFORMATION**

#### **3.1 Submission of Bids:**

- 3.1.1 On-line Bid - If the bidder is responding electronically through the On-line Bidding web site, in addition to completing the on-line pricing, the bidder should submit completed exhibits, forms, and other information concerning the bid as an attachment to the electronic bid. The On-line Bidding website can be found at <https://www.moolb.mo.gov>.
- a. The exhibits, forms, and pricing pages provided herein can be saved into a word processing document, completed by the bidder, and then sent as an attachment to the electronic submission. Other requested, required, or additional information may also be sent as an attachment. Additional instructions for submitting electronic attachments are on the On-line Bidding web site. Be sure to include the bid number, company name, and a contact name on any electronic attachments.
  - b. In addition, the bidder may submit the exhibits, forms, Pricing Pages, etc., through mail or courier service. However, any such submission must be received prior to the specified closing date and time.
  - c. If the bidder submits an electronic and hard copy bid response and if such responses are not identical, the bidder should explain which response is valid. In the absence of an explanation, the State of Missouri shall consider the response which serves its best interest.
- 3.1.2 Mail Bid - If the bidder is responding through the mail, the bidder should include three (3) additional copies along with their original bid, for a total of four (4). The front cover of the original bid should be labeled "original" and the front cover of all copies should be labeled "copy".
- a. Both the original and the copies should be printed on recycled paper and double sided. All bids and copies should minimize or eliminate the use of non-recyclable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding.
  - b. The bidder should include completed copies of each Exhibit and any other requested or required information with the mailed response.
  - c. Imaging Ready – In addition, all bids are scanned into the Division of Purchasing and Materials Management imaging system after a contract is executed, or all bids are rejected.
    - 1) The scanned information will be able to be viewed through the Internet from the Public Record Search system. Therefore, the bidder is advised not to include personal identifying information such as social security numbers in the bid.
    - 2) In preparing a bid, the bidder should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the bids. Glue bound materials should not be used.
- 3.1.3 To facilitate the evaluation process, the bidder is encouraged to organize their bid into distinctive sections that correspond with the individual evaluation categories described herein. The bidder is cautioned that it is the bidder's sole responsibility to submit information related to the evaluation categories and that the State of Missouri is under no obligation to solicit such information if it is not included with the bid. The bidder's failure to submit such information may cause an adverse impact on the evaluation of the bid.
- a. Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included therein.
  - b. The bid should be page numbered.
  - c. The signed page one from the original IFB and all signed amendments should be placed at the beginning of the bid.

### 3.2 Evaluation and Award Process:

3.2.1 After determining that a bid satisfies the mandatory requirements stated in the Invitation for Bid, the evaluator(s) shall use both objective analysis and subjective judgment in conducting a comparative assessment of the bid in accordance with the evaluation criteria stated below:

- a. Cost.....60 points
- b. Experience, Reliability, Expertise, and Method of Performance.....40 points

3.2.2 After an initial screening process, a question and answer conference or interview may be conducted with the bidder, if deemed necessary by the Division of Purchasing and Materials Management. In addition, the bidder may be asked to make an oral presentation of their bid during the conference. Attendance cost at the conference shall be at the bidder's expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.

3.2.3 Preference for Organizations for the Blind and Sheltered Workshops – Pursuant to RSMo 34.165, a five (5) bonus point preference shall be granted to bidders including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for bidders qualifying for the preference.

- a. If the bidder is an organization for the blind or sheltered workshop, the bidder should provide evidence of qualifications (i.e., copy of certificate or certificate number).
- b. If the bidder is utilizing an organization for the blind or a sheltered workshop as a subcontractor, the bidder should submit: (1) a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract, and (2) evidence that the subcontractor qualifies as an organization for the blind or sheltered workshop.
- c. The two known organizations for the blind in the State of Missouri are Lighthouse for the Blind and Alpha Pointe. A list of Missouri sheltered workshops can be found at the following internet address:

<http://www.dese.state.mo.us/divspeced/shelteredworkshops/swindex.html>

### 3.3 Evaluation of Cost:

3.3.1 The objective evaluation of cost shall be based upon the firm, fixed price stated on the Pricing Page.

Cost points shall be calculated using the following formula:

$$\frac{\text{Lowest Responsive Price}}{\text{Compared Price}} \times 60 = \text{Cost score points}$$

- a. Bidders shall agree and understand that the quantities used in the evaluation of cost are provided solely to document how cost will be evaluated. The State of Missouri makes no guarantee regarding the accuracy of the quantities stated nor does the State of Missouri intend to imply that the figures used for the cost evaluation in any way reflect actual nor anticipated usage.

### 3.4 Evaluation of Bidder's Experience, Reliability, Expertise, and Method of Performance:

3.4.1 Experience and reliability of the bidder's organization are considered subjectively in the evaluation process. Therefore, the bidder is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this IFB.

- 3.4.2 The bidder should provide, on Exhibit A or in any other format, the following information related to previous and current services/contracts performed by the bidder's organization and any proposed subcontractors which are similar to the requirements of this IFB. If the contact person listed on Exhibit A is not available or is otherwise unable to be reached during the evaluation, the listed experience may not be considered.
- Name, address, and telephone number of client/contracting agency and a representative of that client/agency who may be contacted for verification of all information submitted;
  - Dates of the service/contract; and
  - A brief, written description of the specific prior services performed and requirements thereof.
- 3.4.3 Business Compliance - The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that the bidder and any proposed subcontractors are presently in compliance with such laws. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but not necessarily be limited to:
- Registration of business name (if applicable)
  - Certificate of authority to transact business/certificate of good standing (if applicable)
  - Taxes (e.g., city/county/state/federal)
  - State and local certifications (e.g., professions/occupations/activities)
  - Licenses and permits (e.g., city/county license, sales permits)
  - Insurance (e.g., worker's compensation/unemployment compensation)
- 3.4.4 The qualifications of the personnel proposed by the bidder to perform the requirements of this IFB, whether from the bidder's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the bidder should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- The bidder may utilize Exhibit B for summarizing the personnel information and should submit detailed resumes for proposed key personnel.
    - Resumes should be structured to emphasize relevant qualifications and experience of the personnel in successfully completing contracts/performing services of a similar size and scope to the requirements of this IFB.
    - Information submitted should clearly identify previous experience in performing similar services and should include beginning and ending dates, a description of the role of the person in such performances, results of the services performed, and how the person's involvement in that service will relate to the person's ability to contribute to the State of Missouri.
  - If personnel are not yet hired, the bidder should provide detailed descriptions of the required employment qualifications; and detailed job descriptions of the position to be filled, including the type of person proposed to be hired.
- 3.4.5 Bids will be subjectively evaluated based on the bidder's distinctive plan for performing the requirements of the IFB. Therefore, the bidder should present a written narrative which demonstrates the method or manner in which the bidder proposes to satisfy these requirements. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of action.
- 3.4.6 The method by which the proposed method of performance is written is left to the discretion of the bidder. The following method may be used:

On Exhibit C, or in any other appropriate format, identify each specific paragraph and subparagraph of the Contractual Requirements by paragraph number as an item for discussion. Immediately below the number, write a description of how, when, by whom, with what, to what degree, why, where, etc., the requirements will be satisfied and otherwise detail the bidder's understanding of the requirements and ability to successfully perform.

3.4.7 In presenting the method of performance, the bidder should submit or describe the following:

- a. Distance between the bidder's place of business and the state agency.
- b. Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products.
- c. Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.
- d. Provide a description of the company's economic presence within the State of Missouri (e.g., type of facilities: sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.

**3.5 Miscellaneous Information** - The bidder should complete Exhibit D, Miscellaneous Information, to document: (1) if the bidder qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the bidder is proposing to include products and/or services manufactured, produced, or assembled by such an organization, (2) whether the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly, or a statewide elected official, and (3) if any products and/or services being bid are being manufactured or performed at sites outside the continental United States.

**4. PRICING PAGE**

- 4.1 Microfilming Services** - The bidder shall provide a firm, fixed price in the table below for for providing the services in accordance with the provisions and requirements of this IFB. All costs associated with providing the required services shall be included in the stated price.

<b>Line Item</b>	<b><i>Description</i> C/S Code: 96199</b>	<b><i>Firm, Fixed Price</i></b>
001	Microfilming Services	\$ _____ <i>Firm, fixed price per microfilm roll</i>

**5. EXHIBITS****EXHIBIT A****PRIOR EXPERIENCE OF BIDDER**

The bidder should copy and complete this form for each reference being submitted as demonstration of the bidder and subcontractor's prior experience. In addition, the bidder is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

<b>Bidder/Subcontractor Name:</b>	
<b>Reference Information (Prior Services Performed For:)</b>	
Name of Reference Company:	
Address of Reference Company:	
Reference Contact Person Name:	
Contact Person Phone #	
Contact Person e-mail address:	
Dates of Prior Services:	
Dollar Value of Prior Services	
Description of Prior Services Performed	

*As the contact person for the reference provided above, my signature below verifies that the information presented on this form is accurate. I am available for contact by the State of Missouri for additional discussions regarding my/my company's association with the bidder referenced above:*

---

*Signature of Reference Contact Person*


---

*Date of Signature*

**EXHIBIT B****PERSONNEL EXPERTISE SUMMARY****(Also attach resumes for key personnel)**

Personnel	Background and Expertise of Personnel
1. _____ (Name)  _____ (Title)	
2. _____ (Name)  _____ (Title)	
3. _____ (Name)  _____ (Title)	
4. _____ (Name)  _____ (Title)	
5. _____ (Name)  _____ (Title)	
6. _____ (Name)  _____ (Title)	
7. _____ (Name)  _____ (Title)	



**EXHIBIT C**

**METHOD OF PERFORMANCE**

The bidder may use this form, or any format desired, to present a written plan for performing the requirements specified in this Invitation for Bid.

**EXHIBIT D****MISCELLANEOUS INFORMATION****Organizations for the Blind or Sheltered Workshop**

If the bidder qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the bidder is proposing to include products and/or services manufactured, produced, or assembled by such an organization, the bidder should identify the name of the organization in the space below and should attach all supporting documentation, as referenced elsewhere herein.

Name & Address of Organization for Blind/Sheltered Workshop:	_____
	_____

**Outside United States**

If any products and/or services bid are being manufactured or performed at sites outside the continental United States, the bidder MUST disclose such fact and provide details in the space below or on an attached page.

Are products and/or services being manufactured or performed at sites outside the continental United States?	Yes _____	No _____
Describe and provide details:		

**Employee Bidding/Conflict of Interest**

A bidder who is an employee(s) of the State of Missouri, a member of the General Assembly, or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly, or a statewide elected official, please provide the following information.

Name of State Employee, General Assembly Member, or Statewide Elected Official:	
In what office/agency are they employed?	
Employment Title:	
Percentage of ownership interest in bidder's organization:	_____ %

**STATE OF MISSOURI**  
**DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**  
**TERMS AND CONDITIONS -- INVITATION FOR BID**

## 1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

## 2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

## 3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the IFB based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the bidder must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance.

## 4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

## 5. SUBMISSION OF BIDS

- a. Bids may be submitted electronically as permitted by the IFB through the State of Missouri's On-Line Bidding website or hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

## 6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Prices shall be posted on the state's On-Line Bidding website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

## 7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

## 8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.

- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding website for a reasonable period after bid award and maintains images of all bid file material for review. Bidders who include an email address with their bid will be notified of the award results via email.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

## **9. CONTRACT/PURCHASE ORDER**

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

## **10. INVOICING AND PAYMENT**

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

## **11. DELIVERY**

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **12. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## **13. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

#### **14. CONFLICT OF INTEREST**

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

#### **15. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

#### **16. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

#### **17. COMMUNICATIONS AND NOTICES**

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

#### **18. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

#### **19. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

#### **20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **21. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **22. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

## **23. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 08/28/04